

§ 2540.202 What eligibility criteria must I apply to a covered position in connection with the National Service Criminal History Check?

In addition to the eligibility criteria you establish, an individual shall be ineligible to serve in a covered position if the individual—

- (a) Refuses to consent to a criminal history check described in § 2540.203 of this chapter;
- (b) Makes a false statement in connection with a criminal history check described in § 2540.203 of this chapter;
- (c) Is registered, or is required to be registered, on a state sex offender registry or the National Sex Offender Registry; or
- (d) Has been convicted of murder, as defined in 18 U.S.C. 1111.

[77 FR 60932, Oct. 5, 2012]

§ 2540.203 What search components of the National Service Criminal History Check must I satisfy to determine an individual's eligibility to serve in a covered position?

(a) *Search procedure for individuals in covered positions who do not have recurring access to vulnerable populations.* Unless the Corporation approves an alternative search procedure under § 2540.207 of this chapter, to determine an individual's eligibility to serve in a covered position, you must conduct and document a National Service Criminal History Check that consists of the following components:

(1) A nationwide name-based search of the Department of Justice (DOJ) National Sex Offender Public Web site (NSOPW), and

(2) Either:

(i) A name- or fingerprint-based search of the official state criminal history registry for the state in which the individual in a covered position will be primarily serving or working *and* for the state in which the individual resides at the time of application; or

(ii) Submission of fingerprints through a state central record repository for a fingerprint-based Federal Bureau of Investigation (FBI) national criminal history background check.

(b) *Search procedure for individuals in covered positions who have recurring ac-*

cess to vulnerable populations. (1) This rule applies to individuals who:

(i) Begin working for, or who start service with, you on or after April 21, 2011;

(ii) Will be 18 years old or older at any time during their term of service; and

(iii) Serve in a covered position that will involve recurring access to children age 17 years or younger, to individuals age 60 years or older, or to individuals with disabilities.

(2) Unless the Corporation approves an alternative search procedure or an exception under § 2540.207 of this chapter, to determine the eligibility of an individual described in paragraph (b)(1) of this section you must conduct and document a National Service Criminal History Check that consists of the following components:

(i) A nationwide name-based search of the Department of Justice (DOJ) National Sex Offender Public Web site (NSOPW);

(ii) A name- or fingerprint-based search of the official state criminal history registry for the state in which the individual in a covered position will be primarily serving or working *and* for the state in which the individual resides at the time of application; and

(iii) Submission of fingerprints through a state central record repository for a fingerprint-based FBI national criminal history background check.

[77 FR 60932, Oct. 5, 2012]

§ 2540.204 When must I conduct a National Service Criminal History Check on an individual in a covered position?

(a) *Timing of the National Service Criminal History Check Components.* (1) You must conduct and review the results of the nationwide NSOPW check required under § 2540.203 before an individual in a covered position begins work or starts service.

(2) You must initiate state registry or FBI criminal history checks required under § 2540.203 before an individual in a covered position begins work or starts service. You may permit an individual in a covered position to begin work or start service pending the

§ 2540.205

receipt of results from state registry or FBI criminal history checks as long as the individual is not permitted access to children age 17 years or younger, to individuals age 60 years or older, or to individuals with disabilities, without being in the physical presence of an appropriate individual, as described in § 2540.205(g) of this chapter.

(b) *Consecutive terms.* If an individual serves consecutive terms of service in a covered position and does not have a break in service that exceeds 120 days, then no additional National Service Criminal History Check is required, as long as the original check is a compliant check for the covered position in which the individual will be serving or working following the break in service. If your program or project is designed with breaks in service over 120 days, but less than 180 days between consecutive terms, you may request approval for a break in service of up to 180 days before a new National Service Criminal History Check is required. Your request must describe the overall program design, explain why the longer period is reasonable, and demonstrate that you have established adequate risk management controls for the extended break in service.

[77 FR 60932, Oct. 5, 2012]

§ 2540.205 What procedures must I follow in conducting a National Service Criminal History Check for a covered position?

You are responsible for following these procedures:

(a) Verify the individual's identity by examining the individual's government-issued photo identification card, such as a driver's license;

(b) Obtain prior, written authorization from the individual for the State registry check, for the FBI criminal history check, and for the appropriate sharing of the results of the checks within the program. Prior written authorization from the individual is not required to conduct the nationwide NSOPW check;

(c) Document the individual's understanding that selection into the program is contingent upon the organization's review of the individual's National Service Criminal History Check component results, if any;

45 CFR Ch. XXV (10–1–14 Edition)

(d) Ensure that screening practices comply with federal civil rights laws, including Titles VI and VII of the Civil Rights Act of 1964 (and the Corporation's implementing regulations under Title VI);

(e) Provide a reasonable opportunity for the individual to review and challenge the factual accuracy of a result before action is taken to exclude the individual from the position;

(f) Provide safeguards to ensure the confidentiality of any information relating to the criminal history check, consistent with authorization provided by the applicant; and

(g) Ensure that an individual, for whom the results of a required state or FBI criminal history registry check are pending, is not permitted to have access to children age 17 years or younger, to individuals age 60 years or older, or to individuals with disabilities without being in the physical presence of:

(1) Your authorized representative who has previously been cleared for such access;

(2) A family member or legal guardian of the vulnerable individual; or

(3) An individual authorized, because of his or her profession, to have recurring access to the vulnerable individual, such as an education or medical professional.

(h) Unless specifically approved by the Corporation, you may not charge an individual for the cost of any component of a National Service Criminal History Check.

[77 FR 60932, Oct. 5, 2012]

§ 2540.206 What documentation must I maintain regarding a National Service Criminal History Check for a covered position?

You must:

(a) Document in writing that you verified the identity of the individual in a covered position by examining the individual's government-issued photo identification card, and that you conducted the required checks for the covered position; and

(b) Maintain the results, or a results summary issued by a State or Federal government body, of the NSOPW check and the other components of each National Service Criminal History Check,